

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

JAN 20 2012

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2011-0295-PR
)	DEPARTMENT B
Respondent,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
ROBERT VINCENT INIGO,)	the Supreme Court
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20083106

Honorable Howard Fell, Judge Pro Tempore

REVIEW GRANTED; RELIEF DENIED

Patrick C. Coppen

Tucson
Attorney for Petitioner

V Á S Q U E Z, Presiding Judge.

¶1 Robert Inigo petitions this court for review of the trial court’s summary denial of his petition for post-conviction relief brought pursuant to Rule 32, Ariz. R. Crim. P. We will not disturb that ruling unless the court clearly has abused its discretion. *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007).

¶2 Inigo was convicted after a jury trial of possession of a dangerous drug and sentenced to an enhanced, presumptive, ten-year prison term. We affirmed his conviction and sentence on appeal. *State v. Inigo*, No. 2 CA-CR 2009-0113 (memorandum decision filed Apr. 15, 2010). Inigo then filed a notice and petition for post-conviction relief arguing: (1) he was incompetent at the time of trial; (2) the jury instruction on reasonable doubt given pursuant to *State v. Portillo*, 182 Ariz. 592, 898 P.2d 970 (1995), constituted “constitutional or structural error”; (3) trial counsel had been ineffective at sentencing for failing to present mitigating evidence of neglect and abuse Inigo suffered as a child; and (4) the trial court considered incorrect information at sentencing, specifically that Inigo’s criminal history was a result of not having proper parental supervision instead of a result of his previous abuse and mental health difficulties.

¶3 The trial court summarily denied relief. *See* Ariz. R. Crim. P. 32.6(c) (court shall summarily dismiss claims not “present[ing] a material issue of fact or law which would entitle the defendant to relief”); *State v. Runningeagle*, 176 Ariz. 59, 63, 859 P.2d 169, 173 (1993) (“[A] defendant is entitled to an evidentiary hearing only when he presents a colorable claim—one that, if the allegations are true, might have changed the outcome.”). The court determined Inigo had identified no facts demonstrating he was

not competent to stand trial and noted evaluations pursuant to Rule 11, Ariz. R. Crim. P., under a different, previous cause number had concluded Inigo was competent to stand trial. It also noted that our supreme court had repeatedly denied challenges to the *Portillo* reasonable doubt instruction. As to Inigo's sentencing claims, the court concluded Inigo had not demonstrated he might have received a lesser sentence if his allegations are true. *See State v. Bennett*, 213 Ariz. 562, ¶ 21, 146 P.3d 63, 68 (2006) ("To state a colorable claim of ineffective assistance of counsel, a defendant must show both that counsel's performance fell below objectively reasonable standards and that this deficiency prejudiced the defendant."); *Runnigeagle*, 176 Ariz. at 63, 859 P.2d at 173. The court observed that evidence of the abuse Inigo suffered as a child was contained in materials presented at sentencing, that it properly considered all relevant evidence, and that, "even if [Inigo] had presented everything [he] requests in his petition in the exact manner he requests, the Court still would have issued a presumptive sentence."

¶4 On review, Inigo asserts he raised colorable claims below and therefore was entitled to an evidentiary hearing. *See Runnigeagle*, 176 Ariz. at 63, 859 P.2d at 173. But we conclude the trial court correctly resolved his claims in a thorough and well-reasoned minute entry, and we therefore adopt the court's order summarily denying Inigo's petition for post-conviction relief. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993) (when trial court has identified and ruled correctly on issues raised "in a fashion that will allow any court in the future to understand the resolution[, n]o useful purpose would be served by this court rehashing the trial court's correct ruling in a written decision").

¶5 As to Inigo’s argument regarding his purported incompetency at the time of trial, we write further only to amplify the trial court’s ruling. Inigo’s claim of incompetence is rooted chiefly in what he described as “psychological reports evidencing [his] contributing mental health problems” and statements he allegedly made suggesting he had desired a substantially longer prison sentence than available under the sentencing statutes or described in a plea offer. But, in order to present a colorable claim, Inigo had to present evidence that, if true, would permit the inference that, “as a result of a mental illness, defect, or disability,” he was “unable to understand the proceedings against him . . . or to assist in his . . . defense.” Ariz. R. Crim. P. 11.1; *see also Runningeagle*, 176 Ariz. at 63, 859 P.2d at 173.

¶6 Inigo’s apparent desire for a longer prison sentence does not support that inference. At a minimum, he identifies no evidence suggesting his wish for a longer sentence stemmed from a mental illness. Nor does his purported desire suggest he did not understand the proceedings against him. And, in any event, despite allegedly having previously expressed a desire for a longer prison sentence, Inigo later denied having committed the offense and expressed frustration that, if he pled guilty, he would serve a prison term for, as he stated, possessing only “five pills.”

¶7 Moreover, as the trial court noted, the evaluations prepared pursuant to Rule 11 in a previous cause number that Inigo included with his petition in no way support Inigo’s claim of incompetence—both evaluators found he was competent to stand trial. In short, Inigo has identified no evidence suggesting that, due to a mental illness, he did not understand the proceedings against him or that he was unable to participate in his

defense. *See* Ariz. R. Crim. P. 11.1. Thus, his claim that he was incompetent at the time of trial is not colorable, and the court did not err in summarily denying it. *See* Ariz. R. Crim. P. 32.6(c); *Runnigeagle*, 176 Ariz. at 63, 859 P.2d at 173.

¶8 For the reasons stated, although we grant review, we deny relief.

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Presiding Judge

CONCURRING:

/s/ Philip G. Espinosa
PHILIP G. ESPINOSA, Judge

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Judge